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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/601,796	06/23/2003	Morris Samelson	P-5435(DIV1)	7988
7590 02/02/2005 GUNN & LEE, P.C., 700 N. ST. MARY'S STREET, STE.1500 SAN ANTONIO, TX 78205			EXAMINER CHANNAVAJJALA, LAKSHMI SARADA	
			ART UNIT 1615	PAPER NUMBER

DATE MAILED: 02/02/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary**Application No.**

10/601,796

Applicant(s)

SAMELSON ET AL.

Examiner

Lakshmi S Channavajjala

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 December 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

Receipt of responses dated 11-16-04 and 12-10-04 is acknowledged.

Claims 1-18 are pending.

Response to Arguments

Applicant's arguments filed 11-16-04 have been fully considered but they are not persuasive.

Claim rejections under 35 USC 102:

Applicants argue that the salts of Genis reference are preferably sodium chloride or potassium chloride (col. 2, lines 60-61). In other words, applicants argue that Genis does not disclose Dead Sea salts in granule form, but simply an added ingredient to the composition. Applicants' argument is not persuasive because Genis clearly states, "the word salt is used in this specification and claims in its broad chemical meaning, and not as a common word to designate sodium chloride". Genis also states that word "granules" means small solid particles and does not imply any limitation as to the shape of such particles nor as to their structure, though salt granules will generally have a crystalline structure. With respect to applicants' argument regarding the preferred salt of Genis, the prior art teachings are not limited to preferred embodiments or examples and instead should be taken as a whole. Applicants argue that example 1 of Genis contains salt granules of potassium or sodium and not Dead Sea salts. However, example 1 clearly mentions DHB 400, which is a trade name for Dead Sea salt (col. 2), in addition to potassium salts. Applicants argue that Genis fails to disclose "a mixture of at least 50% of the processed Dead Sea mineral salts", which is not persuasive because instant claim as presented does not indicate that 50% pertains to the weight of processed dead Sea salts and

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instead only indicates that at least 50% of the Dead Sea mineral particles are processed. While the specification describes applicants' position, instant claims language does not. With respect to the argument that Genis only teaches Dead Sea salts as mineral solutes comprising approximately 5.86% of the cosmetic cream is moot because as explained, the claim limitation is interpreted as Dead Sea particles of which at least 50% are processed and hence the argument regarding the concentration of Dead Sea salts taught by Genis is not pertinent. With respect to applicants' argument rearing the particle size of Dead Sea salts, Genis clearly includes Dead Sea salts under the umbrella of 'salts' and teaches the particle size. Applicants argue that instant composition comprises not just vitamin E and hence examiner's argument regarding the settling out of the carrier medium based on the presence of vitamin E is not persuasive because applicants have not shown that the property being argued is not possessed by the composition of Genis. Further, unlike examiner's argument that instant composition contains many other ingredients, instant claims only recite Vitamin E and Dead Sea salts, also taught by Genis. Thus, examiner has shown a composition with the claimed ingredients and the burden to show that the composition does not possess the claimed property is shifted to applicants.

Rejection of claims 11, 12, 14 and 15 as being rejected under 35 USC 103:

Applicants argue that Genis fails to teach "essential oil blend" or "essential oil comprising lavender or chamomile or calendula". However, while agreeing that EP 245 teaches Dead Sea salts, lavender and chamomile, they argue that the above are taught as aromatic essence not as oil. Applicants' arguments are not persuasive the claimed "essential oil blend" is not distinguished from the "aromatic essence" of the prior art. Accordingly, using the

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components in an amount sufficient to achieve the desired effect would have been within the scope of a skilled artisan. Further, the motivation to use the claimed herbal components in the composition of Genis composition from the fact that both Genis and EP 245 teach cosmetic compositions comprising Dead Sea salts and the advantage of adding the above components of EP 245 comes from their therapeutic and relaxing effects on skin. Applicants argue that EP 245 does not teach ultra fine Dead Sea salts with essential oil blend. This argument is not persuasive because the teaching of Dead Sea salts (particulate) comes from Genis and not EP 245 and the motivation to add the claimed components such as calendula, lavender etc comes from the teachings of EP 245, which teaches using Dead Sea salts together with aromatic herbal components and the expected result is to provide relaxing as well as therapeutic effect to the skin.

Claims 2-10, 13 and 17 rejected under 35 USC 103:

Applicants argue that the limitation "all natural carrier medium comprises palm oil", and the limitations of other oils are not taught by Genis. Applicants argue that EP 245 discloses lavender, calendula etc., but fails to teach the essential oil blend of claim 17. Applicants also argue that neither Durr teach the claimed limitations. It is argued that the use of Dead Sea salts varies dramatically in the cited references and hence the teachings constitute non-analogous art. Applicants' arguments are not persuasive because Durr teaches a number of oils and other herbal components (such as those claimed) that are suitable in a cosmetic composition for providing relief to dry skin, eczema, psoriasis etc. Accordingly, it is the position of the examiner that choosing appropriate oil in the composition of Genis comprising the aromatic essence of EP 245, for its art recognized effect would have been within the scope of a skilled artisan. Applicants'

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argument that instant invention is to dramatically increase the concentration of Dead Sea minerals that can be introduced and remain in a cosmetic composition for ultimate absorption into the human skin is not persuasive because, the cited prior art teaches Dead Sea salts for their cosmetic effect on the skin. Applicants have not shown any comparative data establishing the criticality of the invention and it is clear from the above teachings that cosmetic compositions comprising Dead Sea salts are not unknown in the art and therefore optimizing the amounts of the salts in the cosmetic compositions would have been obvious for one of an ordinary skill in the art. However, as also explained in the preceding paragraphs, the claims are not interpreted as 50% by weight of the salts and instead 50% of the salts being processed. Therefore, the rejections have been maintained.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lakshmi S Channavajjala whose telephone number is 571-272-0591. The examiner can normally be reached on 9.00 AM -6.30 PM, Monday-Friday, except alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman K Page can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-272-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Lakshmi S Channavajjala
Examiner
Art Unit 1615
January 26, 2005



THURMAN K. PAGE
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 1600